

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Residents for)	AND
Responsible Land Use)	STATEMENT OF FINDINGS

The BFP Action Committee filed two complaints against Residents for Responsible Land Use, alleging that the committee violated Montana campaign finance and practices laws.

SUMMARY OF FACTS

1. In the November 7, 2006 election a ballot issue was submitted to the voters of Ravalli County. Commonly known as the “1 per 2 measure,” the ballot issue proposed adoption of an interim zoning regulation that would limit subdivisions within the county to a density of one dwelling per two acres, with limited variances permitted.
2. Residents for Responsible Land Use (RRLU) was formed as a ballot issue committee when it filed a C-2 Statement of Organization with the Commissioner of Political Practices (CPP) on September 27, 2006. Ramona Wagner was listed as the Treasurer. The C-2 states that the purpose of RRLU was to oppose to the 1 per 2 measure.
3. Phillip Taylor was the Treasurer of the Bitterrooters for Planning Action Committee (BFP Action Committee), a political committee that supported the 1 per 2 measure. On October 26, 2006, Taylor filed a complaint against RRLU on behalf of the BFP Action Committee, alleging that as of October 21, 2006 RRLU was in violation of Montana’s naming and labeling statute, § 13-37-210, MCA. That statute requires a political committee to select a name that identifies the economic or other special interest, if identifiable, of a majority of its contributors. The complaint alleges that as of October 21, 2006 RRLU was funded solely by the Bitterroot Building Association.

4. Marilyn Owns Medicine was the President of the BFP Action Committee. On November 30, 2006, Owns Medicine filed a complaint alleging that on October 28, 2006 she received a telephone call from a person asking whether she was in favor of the 1 per 2 measure. According to the complaint, when Owns Medicine asked the caller who she worked for, the caller told her “Advantage Research.” Owns Medicine claims that when she asked the caller who hired Advantage Research, the caller would not disclose that information and eventually hung up. Owns Medicine believes that because RRLU was opposed to the 1 per 2 measure, RRLU must have funded the call. She contends that RRLU funded a telephone poll that did not include identification of the person who made or financed the expenditure for the communication, in violation of § 13-35-225, MCA. The complaint also alleges that RRLU failed to report the cost of the phone survey, which amounted to an expenditure in opposition to the 1 per 2 measure.

5. The Bitterroot Building Association is a trade and industry membership organization that supports the construction and building industry in the Bitterroot Valley area. The BBA has been in existence since 1996. The organization has changed its name to the Bitterroot Building Industry Association, but it will be referred to herein as “BBA.” BBA opposed the 1 per 2 measure and filed a C-2 Statement of Organization identifying itself as an incidental political committee.

6. Jason Rice identified himself as Co-Chairman of RRLU. Rice was also a member of BBA. Karen Thompson, Executive Director of BBA, described Rice as the “link” between BBA and RRLU. According to Rice BBA’s government relations group “helped spearhead” RRLU activities. Some RRLU meetings were held at BBA offices in Hamilton, Montana.

7. Ramona Wagner, the Treasurer of RRLU, resides in Missoula and operates a winery with her husband in the Missoula area. Wagner and her husband also have a consulting business known as Clearweather Enterprises (CWE). RRLU hired Wagner to handle the committee’s accounting and campaign advertising, and to be the committee’s Treasurer.

8. During the campaign involving the 1 per 2 measure, Wagner paid invoices for RRLU through CWE. Wagner was paid and reimbursed for the services she provided to RRLU through CWE invoices she submitted to RRLU. As Treasurer, Wagner paid the CWE invoices with RRLU funds. However, the CWE invoices did not list hours worked by Wagner and provided little detail regarding the basis for the payments for her work, typically listing only “consulting services.” Wagner claims that despite the arrangement whereby her consulting business submitted bills to RRLU for payment, she was hired “as an individual” to be the Treasurer of RRLU. There were no written contracts between Wagner and RRLU or between RRLU and CWE.

9. On September 27, 2006 Wagner opened an account for RRLU at First Security Bank in Missoula by writing and depositing a check for \$100 drawn on Wagner's personal account. She contends she did so because RRLU had not yet obtained other funds with which to operate. Wagner maintains she did not report the \$100 as a loan to RRLU because it was paid back quickly, and she did not believe it was necessary to report it.
10. On September 27, 2006 Wagner registered RRLU as an assumed business name with the Office of the Secretary of State. Wagner paid \$43 with a personal check drawn on her account for "priority" registration of the assumed business name and a "fax fee."
11. On October 5, 2006 RRLU paid \$143 to Wagner as reimbursement for the \$100 she had paid to open a bank account and the \$43 she had paid to register an assumed business name for RRLU.
12. RRLU did not report as contributions or loans either the \$100 check from Wagner to open a bank account or the \$43 payment from Wagner to register an assumed business name, on any of its form C-6 political committee financial disclosure reports that it filed with CPP. RRLU also did not disclose as an expenditure on any of its C-6 reports the \$143 payment it made to Wagner as reimbursement for her payments described above.
13. RRLU hired Steve Sego as a campaign consultant. Sego is part owner of a business known as Madison Communications Northwest, Inc. (MCN). MCN submitted invoices to CWE for the cost of the services Sego provided to RRLU. Those invoices were paid by CWE, which then billed the amounts to RRLU. Neither Sego nor MCN had written contracts with RRLU or CWE. Sego attended at least one BBA meeting (on September 21, 2006.)
14. Jason Rice, as Co-Chairman of RRLU, submitted a written response to both complaints. In the written response to Taylor's complaint Rice contends that RRLU's periodic campaign finance report for the period October 22 through November 20, 2006 shows that there were five contributors to RRLU: BBA and four individuals who are residents of Ravalli County. Rice maintains that a majority of the contributors to RRLU did not share an economic or special interest, and therefore there was no violation of § 13-37-210, MCA. In response to the complaint filed by Owns Medicine, Rice claims that to the best of his knowledge RRLU did not hire Advantage Research, and that RRLU only hired one consultant, which he did not identify. The written response quotes an email from Steve Sego to Rice stating:

I checked with our phone firm, and we conducted calls on October 8-10, and again on November 3-7. We never made calls on the date referenced in the complaint, and in fact sent our GOTV script to our callers on November 1. No calls were conducted between October 10 and November 3, perhaps beginning as late as November 4.

The email from Sego quoted in Rice's response does not identify the "phone firm" hired by RRLU to make the calls.

15. Rice states that RRLU hired Steve Sego to "coordinate" RRLU activities. He said that Sego took over RRLU operations after he was hired and handled nearly all aspects of the campaign including campaign ads.

16. According to Ramona Wagner, a firm known as Advantage, Inc. was used to provide telephone polling services to RRLU. Jeff Butzke is the President of Advantage, Inc., which is headquartered in Arlington, Virginia. Wagner stated she did not recall when Advantage, Inc. was paid or the method of payment. Steve Sego confirmed that Advantage, Inc. provided the telephone polling services for RRLU. According to an email from Butzke to Sego, Advantage, Inc. conducted telephone polling calls October 9-11, November 2, and November 5-6, 2006. Relying on information provided by Butzke, Sego contends Advantage, Inc. did not place any calls between October 12 and November 1, 2006.

17. Owns Medicine did not provide any detail regarding the content of the telephone call mentioned in her complaint, other than the information summarized in Fact 4. Ramona Wagner stated that RRLU did not retain copies of the telephone scripts used by Advantage, Inc. Steve Sego also stated that he did not have copies of the telephone scripts. And, according to Jeff Butzke, Advantage, Inc. did not retain copies of the scripts for the telephone calls that it made for RRLU.

18. BBA made the following contributions to RRLU:

\$10,000 on September 28, 2006

\$10,000 on October 10, 2006

\$17,000 on October 16, 2006

\$5,000 on October 25, 2006

\$5,000 on October 26, 2006

\$7,500 on November 1, 2006

The contributions to RRLU were derived from funds solicited by BBA from donors who were aware that their donations would fund payments by BBA to RRLU to oppose the 1 per 2 measure. A letter from Paul Wilson, who at the time was President of BBA, was distributed to "members and friends of the building industry." According to counsel for BBA, a copy of the letter was sent by email to the BBA membership, with 30 members receiving a mailed copy because they did not have an email address. The top of the letter contains the notation "Residents for Responsible Land Use, 'No 1 per 2'." The letter advises readers that if they wished to contribute to the effort to defeat the 1 per 2 measure they could contact BBA for instructions on how to make a donation. Donors were specifically informed that they were contributing to the effort to defeat the 1 per 2 measure. Donors to

the fund included Western Montana Realty Group, LLC, the Bitterroot Valley Board of Realtors, a number of building construction firms, the Montana Land Alliance, Inc., and individuals, including Jason Rice. Dorene Sain, a self-employed real estate broker, contributed \$900 to the BBA fund. Sain also contributed \$10 to RRLU in November, 2006. (See Fact 19.) BBA kept the donations in a “special issues fund,” and then periodically made payments to RRLU from the account.

19. RRLU reported the following contributions from individuals:

Dorene Sain	\$10	Reported as a cash contribution
Gary Shook	\$10	Reported as a cash contribution
Penney Howe	\$10	Check dated November 16, 2006
Margaret R. Mason	\$10	Check dated November 16, 2006

RRLU deposited the \$40 in individual contributions into its account on November 20, 2006.

20. RRLU did not maintain records establishing when it received contributions.

21. RRLU filed a C-6 for the reporting period of September 26, 2006 to October 21, 2006, reporting three contributions from BBA -- \$10,000 received on September 28, \$10,000 received on October 10, and \$17,000 received on October 16. The C-6 did not disclose any other contributions for the period, including the loans from Wagner to open a bank account and to register an assumed business name for RRLU. And, RRLU did not report as an expenditure the \$143 it paid to Wagner as reimbursement for the two transactions. (See Facts 9 – 12.)

22. RRLU filed a C-6 for the reporting period of October 22, 2006 to November 22, 2006, reporting three contributions from BBA -- \$5,000 received on October 25, \$5,000 received on October 26, and \$7,500 received on November 1. The C-6 also reported the four individual contributions listed in Fact 19. The C-6 lists the following occupations for the individual contributors:

Dorene Sain	Real Estate Broker, Self-Employed
Garry Shook	Retired
Penney Howe	Administrative Assistant Contractor, Self Employed
Margaret Mason	Retired, Part-Time work Montana Land Alliance, Inc.

23. RRLU filed a C-6 for the reporting period of November 21, 2006 to December 31, 2006, reporting no contributions. RRLU designated this report as its closing report. In the report RRLU disclosed a payment to CWE of \$25.04, which was exactly the amount of funds remaining in RRLU’s account when the payment was made. Wagner admitted that she had more expenses than the \$25.04 payment she requested, but said she “cut them some slack” because the \$25.04 was all that remained in RRLU’s account. Wagner estimated she may have

actually been owed “a few hundred dollars or less,” but despite several requests during the investigation of this matter, she did not provide documentation of the amount owed to her. RRLU did not report as an in-kind contribution the difference between what it actually owed Wagner and the \$25.04 it paid her. RRLU’s closing report also did not disclose an in-kind contribution from BBA for the use of its offices as a meeting room, as described in Fact 6.

24. CWE produced two invoices that appear to reflect charges for telephone polling conducted by Advantage, Inc. Invoice # 54, dated October 9, 2006, charged RRLU \$3,765 for “Phone ID calls – 6,845 completed, phone script, data report.” Invoice # 64, dated November 2, 2006, charged RRLU \$700 for “Advocacy calls – 3,250 completed & script.” Neither invoice specifies the dates on which the calls were made.

25. Ramona Wagner was not employed by BBA, and she was not associated with BBA other than in her capacity as Treasurer of RRLU. Wagner claims she does not know how the relationship between BBA and RRLU was established. She contends she did not request that BBA contribute money to RRLU; she just received the money and deposited it into RRLU’s account.

26. Karen Thompson, Executive Director of BBA, recalls having frequent conversations with Wagner. Thompson recalls contacting Wagner and advising her of the check amounts as donations were received by BBA for deposit into the “action fund” account, so that RRLU could make appropriate budget decisions for its campaign against the 1 per 2 measure. Thompson also contends that members of BBA were directly involved with RRLU, including Jason Rice and Paul Wilson, who at that time was the President of BBA.

STATEMENT OF FINDINGS

Naming of Political Committees

Complainant Phillip Taylor alleges RRLU is not appropriately named under § 13-37-210, MCA, which provides in part as follows:

- Naming and labeling of political committees.** (1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:
- (a) name and identify itself in its organizational statement using a name or phrase:
 - (i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and
 - (ii) if a majority of its contributors share a common employer, that identifies the employer;

The complaint alleges RRLU is improperly named in violation of the statute because the committee was funded solely by BBA, and as of October 21, 2006 had no other contributors.

To establish a violation of this section it would be necessary to prove that RRLU's name did not clearly identify the economic or special interest (if identifiable) of a majority of the *contributors* to RRLU. The source of the majority of the *contributions* received is not the test for determining whether a violation has occurred. Determination of shared economic or special interest is based on the "name of the employer" and "occupation" information provided by the contributor and listed in a political committee's C-6 report. (See § 13-37-210, MCA and Commissioner's Opinion Regarding Interpretation and Enforcement of Naming and Labeling Statute, October 22, 1999.)

RRLU's initial C-6 financial disclosure report (September 26 to October 21, 2006) only disclosed three contributions totaling \$37,000, all from a single contributor – BBA. However, RRLU received two other *unreported* contributions during the reporting period. Ramona Wagner loaned RRLU \$100, which was deposited into RRLU's bank account on September 27, 2006. Wagner also loaned RRLU \$43 to register an assumed business name. (Facts 9 and 10). Even though the two loans from Ramona Wagner were never reported by RRLU, the loans were contributions. (See §§ 13-1-101(7)(a)(i) and 13-37-229(6), MCA; and ARM 44.10.321(1)(a) and 44.10.515.) Thus, RRLU actually received contributions from two contributors during the first reporting period – BBA and Wagner. BBA and Wagner do not share an economic or special interest (Fact 25); therefore there was no violation of Montana's statute regulating naming and labeling of political committees based on contributions reported during the first reporting period.

This case presents facts that are quite similar to those set forth in my decision in the *Matter of the Complaint Against Ravalli County Citizens for Free Enterprise*, Summary of Facts and Statement of Findings (October 16, 2008). In the decision the committee was referred to as RCCFE. For several days Ramona Wagner was the Treasurer of RCCFE. Wagner loaned RCCFE \$100 to open a bank account, and the loan was not reported on the committee's C-6. The only other contributor during the initial reporting period was Wal-Mart, which contributed \$100,000 to RCCFE. While I found no violation of the naming and labeling statute, because Wagner and Wal-Mart did not share an economic or special interest, I made the following comments, which are pertinent here:

Although I find there was no violation of Montana's naming and labeling statute, this finding is based on the somewhat atypical facts of this case. On its face, RCCFE's first C-6 disclosed only one contribution during the first reporting period – a \$100,000 contribution from Wal-Mart. . .

It was only through the complaint and investigation process that Ramona Wagner's unreported \$100 loan to the committee was determined to be a second contribution, thereby negating what could have been a significant violation of the naming and labeling statute by RCCFE. . . (Id., at 6.)

Similarly, in this case during the first reporting period RRLU would have been in violation of the naming and labeling statute if not for the unreported loans that Ramona Wagner made to the committee, which only came to light as a result of the investigation in this matter.

During the second reporting period (October 22 to November 22, 2006) RRLU reported additional contributions from BBA (\$17,500) and four individual contributors – Doreen Sain, Gary Shook, Penney Howe, and Margaret R. Mason. (See Facts 18, 19, and 22.) RRLU reported no additional contributions in its closing report. Therefore, there were a total of six contributors to RRLU – BBA, Wagner, Sain, Shook, Howe, and Mason. Aside from her duties as Treasurer of RRLU, Ramona Wagner did not share an economic or special interest with BBA or the other contributors. Two of the other four listed individual contributors are described in the C-6 as “retired” (Shook and Mason), with Mason also described as doing “part-time work Montana Land Alliance, Inc.” Contributor Sain’s occupation is described as “real estate broker, self-employed,” and Howe’s occupation is listed as “administrative assistant contractor, self-employed.” BBA and Sain clearly share an economic or special interest in the health and vitality of the building industry in the Bitterroot Valley. Wagner, Shook, and Howe do not share an economic or special interest with the other contributors. Mason’s employment with the Montana Land Alliance could reasonably support a conclusion that her interests are aligned with those of BBA, since the Montana Land Alliance was a contributor to BBA’s special issues fund. (See Fact 18.) However, because a *majority* of the contributors to RRLU (more than three) do *not* share an economic or special interest, RRLU did not violate § 13-37-210, MCA.

Although I have found no violation of the naming and labeling statute, it’s apparent RRLU’s motivation in soliciting several relatively small contributions from the citizens listed in Fact 19 was to ensure it was in compliance with the statute. The complaint alleging a violation of the naming and labeling statute was filed on October 26, 2006 (see Fact 3), and the four \$10 contributions were received subsequently by RRLU. Notably, one of the \$10 contributors, Dorene Sain, also contributed \$900 to the BBA fund that was then used to contribute thousands of dollars to RRLU.

In fact, by far most of the money contributed to RRLU came from BBA. However, as noted previously, the source of the majority of the *contributions* received is not the test for determining whether a violation occurred. Rather, the test is whether a majority of the *contributors* share a common employer or a clearly identifiable economic or special interest. (See page 7.) Although the intent of the statute – truth in naming – is laudable and consistent with full disclosure, it has not always accomplished that objective, and amendments to strengthen or bolster its objective may not pass constitutional muster.

Reporting Violations

As described in Facts 9 - 12, RRLU did not report the \$143 in loans it received from Ramona Wagner as contributions, which violates § 13-37-229(6), MCA. RRLU also did not report the repayment of the loans to Wagner as an expenditure, which violates § 13-37-230(1), MCA.

RRLU failed to report as in-kind contributions the value of the services provided by Ramona Wagner for which she charged RRLU only \$25.04 (Fact 23), and the value of the use of BBA's office for RRLU meetings (Fact 6). An "in-kind contribution" is defined as:

"the furnishing of services, property, or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate, ballot issue or political committee" (44.10.321(2), ARM.)

In-kind contributions must be reported for the reporting period during which they are received. (44.10.511 and 44.10.513, ARM.) The failure to report these contributions constitutes violations of § 13-37-229, MCA and 44.10.511 and 44.10.513, ARM.

RRLU failed to report the contributions it received from BBA as earmarked contributions, as required by 44.10.519(2)(c), ARM. An earmarked contribution is one that is "made with the direction, express or implied, that all or part of it be transferred to or expended on behalf of a specified candidate, ballot issue, or petition for nomination." (44.10.519(1), ARM.) According to 44.10.519(2)(c), ARM, a candidate or political committee that ultimately receives an earmarked contribution shall report it as such, identifying the name, mailing address, occupation, and place of business, if any, of the original contributor. RRLU had an obligation to obtain from BBA information regarding the original donors to BBA's special issues fund, and report that information on its C-6.

Jason Rice, who represented that he was Co-Chairman of RRLU, was also a member of BBA. (Fact 6.) Presumably Rice was well aware that the donations to BBA were designated for a fund within BBA out of which contributions would be made to support RRLU's effort to defeat the 1 per 2 measure. In addition, Karen Thompson noted that she advised Ramona Wagner of the specific check amounts as donations came into BBA, so that RRLU could plan its campaign budget accordingly. (Fact 26.)

RRLU did not maintain records establishing the date or dates on which it received any of its contributions. (See Fact 20.) This violates § 13-37-208, MCA, which requires a campaign treasurer of a political committee to keep detailed accounts. The statute requires accounts to be current within not more than 10 days after the date of receiving a contribution or making an expenditure, and current as of the fifth day before the due date for filing reports. The failure to record the dates on which contributions are received makes it impossible for the

treasurer to ensure that a committee's accounts are current within the time frames established in the statute – an important consideration for anyone who seeks inspection of the committee's records pursuant to § 13-37-209, MCA.

Moreover, because RRLU did not maintain complete and accurate records it is not possible at this time to determine whether RRLU may have also violated § 13-37-207(1), MCA, which requires all funds received by a campaign treasurer to be deposited within five business days following receipt of the funds, and 44.10.511(4), ARM, which requires a contribution to be reported “for the reporting period during which it was received.” Two of the four contributions from individuals described in Fact 19 were made by checks dated November 16, 2006 and deposited on November 20, 2006. While these two contributions may have been deposited in compliance with the five day rule, there is no way to verify whether any of the contributions were in compliance due to RRLU's failure to keep accurate records.

The statutory requirement that a campaign treasurer keep detailed and current accounts is at the core of Montana's laws requiring full disclosure of campaign financial activities. Montana's campaign finance and practices laws were extensively revised in 1975, in the wake of abuses of the political process that came to light during the Watergate scandal. Section 1 of Chapter 480, Laws of 1975, states:

“It is the purpose of this act to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used to support or oppose candidates, political committees, or issues. . . .”

The failure to employ basic accounting principles such as recording the dates on which contributions are received raises serious questions about the entire record-keeping process maintained by RRLU.

Telephone Polling

Complainant Marilyn Owns Medicine alleges that RRLU violated § 13-35-225, MCA, which provides in relevant part:

Election materials not to be anonymous -- statement of accuracy. (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

...

Owens Medicine alleges she received a telephone call on October 28, 2006, from a company known as Advantage Research, asking whether she was in favor of the 1 per 2 measure. Owens Medicine assumes the call was funded by RRLU, which opposed the ballot issue. She claims the telephone call constitutes election materials and that the materials did not have the attribution language required by § 13-35-225, MCA. Owens Medicine did not provide any additional detail regarding the content of the telephone call other than that set forth in her complaint.

RRLU was unable to produce copies of the scripts for the calls, and the President of Advantage, Inc. claims the firm did not retain copies of the scripts for the calls that it made for RRLU. RRLU also provided conflicting information regarding when the calls were made (see Facts 14 and 16), and the invoices for the calls produced by RRLU appear to be inconsistent with the dates of the calls as represented by Sego and Butzke. (See Fact 24.) As a result, it is not possible at this time to determine whether the messages contained in the telephone calls made by Advantage, Inc. for RRLU were subject to the attribution requirements set forth in § 13-35-225, MCA, and there is insufficient evidence that RRLU paid for calls that were made on October 28, 2006.

As noted, this alleged violation cannot be prosecuted due to insufficient evidence. In that regard, I find it implausible that a political committee, a consultant hired by that committee, and the company the committee paid thousands of dollars for telephone polling services, all failed to retain copies of the scripts of the calls and could not affirm through records the dates on which calls were made. While Montana law does not specifically require a political committee to preserve scripts and related information for phone calls that it pays for, RRLU's failure to obtain or preserve the scripts and other records in this case further supports the conclusion that RRLU failed to maintain complete and accurate records related to its campaign activities. (See discussion on pages 9 - 10.)

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is sufficient evidence to conclude that Residents for Responsible Land Use and its treasurer violated Montana campaign finance and practices laws and rules.

Dated this 6th day of January, 2010.



Dennis Unsworth
Commissioner